IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 148 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPKUMAR KANTIBHAI PATEL & CO.

Versus

PATEL BHULABHAI BHAGVANDAS

Appearance:

1. First Appeal No. 148 of 1981

MR BHARAT J SHELAT for Petitioner No. 1-3

MR RM VIN for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 15/03/2004

ORAL JUDGEMENT

The appellants were the defendants in Special Civil Suit No.123 of 1974 in the Court of Civil Judge (S.D.), Nadiad. The respondents, who were the

plaintiffs, had filed the said suit against the appellants to recover Rs.35952.40 ps. being the price of tobacco goods sold to the respondents. They also claimed interest at the rate of 6% from the date of the suit. The appellant no.1 was a partnership firm and, according to the respondents, the appellant no.2 and 3 were its partners.

2. The Learned Judge framed the following issues for his decision:-

1. Whether the plaintiffs prove that in 1972-73 they grew to tobocco in their field and they do joint cultivation?

2. Whether the pltffs. prove that defts No. 3 in May 1973 went to Banagam and purchased pltfs' tobacco at Rs.69/- per 20 killos and defts. Munim Sombhai on 2.5.73 took the delivered of tobocco as per their T.P. (3) and removed the tobacco 10681/- killos were house at Vadod?

3. Whether the pltffs prove that the defts. made part payment of Rs.3,000/- only having balance of Rs.33,315-40 p.a. to be paid?

4. Whether the plttfs are entitled to claim interest @ 6% p.a. amounting to Rs.2,637/- as claimed?

5. Whether the plaintiffs are entitled to recover from defendants Rs.35,952.40?

6. Whether the suit is bad for multifarious cause of action and parties as alleged in w/s. para 9?

7. Whether the defts No. 2 and 3 are not parties of deft. No. 1 and have nothing to do with suit claim?

8. Do the No. defts prove their contention in written statement para 11?

3. After recording the evidence adduced by the parties, both oral and documentary, the Learned Judge recorded the following findings:-

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.
4. In the affirmative.
5. In the affirmative.

6. In the affirmative.
7. In the negative.
8. In the negative.

4. The main contention on behalf of the appellant no.2 and 3 was that they were not partners of the appellant no.1. The Learned Judge, however, rejected the said contention. In view of the findings recorded by the Learned Judge, he decreed the suit in favour of the respondents by his judgment and order dated 28.8.1980.

5. The appellants have, therefore, filed this appeal challenging the said judgment and decree.

6. It appears that at the time when the appeal was admitted, the appellants had applied for stay of execution of the decree and that stay was granted against sale of immovable property on condition that the appellants deposited RS.10000/-, but the appellants failed to do so and the stay was vacated. The learned advocates have no instructions from the parties but, in all probability, the decree must have been executed after the stay was vacated and the respondents must have recovered the decretal dues.

7. Mr.Udayan Vyas, Learned Advocate who appears for the appellant contended that the Learned Trial Judge has erred in holding that the appellant no.2 and 3 were the partners of the appellant no.1. The Learned Judge, however, rejected the said contention observing that all the three defendants had joint interest in the suit transaction and the plaintiffs could not have known whether they were doing business in partnership or in any other capacity. He has also referred to the admission of the appellant no.3 that they have purchased the suit goods from the plaintiff. The finding recorded by the Learned Judge is based on appreciation of evidence and it is not shown how it is erroneous in any manner. There is no substance in the appeal. The same is dismissed. No order as to costs.

(M.C.Patel, J)
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